IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 166 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD KAISER-I-HIND MILLS CO.LTD.

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 166 of 1989
NOTICE SERVED for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1
MRS MAUNA M BHATT for Respondent No. 1
NOTICE NOT RECD BACK for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 20/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the applicant-assessee, the following question of law has been referred to this court by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A', under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

"Whether, on the facts and circumstances of the case, the assessee was entitled to investment allowance in respect of the liability arising out of the fluctuation in exchange rates relatable to the repayment of the principal amount borrowed for purchase of capital equipment?"

2. Mrs. Mona M. Bhatt, learned Standing Counsel for the Central Government, has appeared for the revenue, whereas nobody has appeared for the applicant-assessee though the notice of this court has been duly served upon the Official Liquidator as the applicant company has been ordered to be wound up by this court.

3. Our attention has been drawn by the learned counsel appearing for the respondent to a judgment delivered by this court in the case CIT v. GSFC being I.T.R. No. 178/85 on 19th October 2002.

4. It has been submitted by the learned counsel that a similar question had been referred to the Full Bench in the case referred to hereinabove. Majority view of the Bench is to the effect that the assessee in such a case is entitled to investment allowance in respect of liability arising out of the fluctuations in exchange rate relatable to repayment of principal amount borrowed for the purpose of purchase of capital equipment.

5. Looking to the law laid down by this court in the judgment referred to hereinabove, we answer the question in the affirmative, that is, in favour of the assessee and against the revenue.

The reference, thus, stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(K.M. Mehta, J.)

(hn)